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ABSTRACT

The paper discusses components of a model Barrier-Free Design law which state legislatures might adopt to promote accessibility to and use of buildings by physically disabled persons. The model also suggests the creation of a board for barrier free design. Outlined are aspects of definitions, and detailed are the board's composition and terms of office, bylaws, duties, powers, and penalties. Differences between this model and a 1976 proposal by A. Farber are explained. The draft of the model act is presented. (CL)

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An Outline of Provisions for a Uniform Barrier-Free Design Act

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FOREWORD

Over the last decades, Americans have been learning to see what we have never seen before. I refer not to flying saucers but to people -- people who have been hidden from us by prejudice, by custom, and by ignorance. Ralph Ellison described the phenomenon for blacks in his powerful novel, The Invisible Man.

Today, finally, we see the black population; we are only beginning to see other groups -- women, the American Indian, the elderly, the handicapped -- see them both as national resources and as groups having claims on the national conscience.

This publication is one of a series of six, the titles of which are listed in the acknowledgements, that HUD's Office of Policy Development and Research has sponsored to accomplish the important task of making buildings accessible to and usable by the physically handicapped through improving the American National Standards Institute's A117 standard.

Prepared under the supervision of the Office of Policy Development and Research, these volumes have won a research award from Progressive Architecture. To quote from the jury comments: "In terms of the effect that the work will have on future architecture and planning, the new ANSI standard A117.7 has got to be the blockbuster of all.....It's a very solid piece of work."

It is indeed. I am proud to present it to you.

Donna E. Shalala
Assistant Secretary
for Policy Development
and Research

Introduction

This paper presents an outline of provisions for a model Uniform Barrier-Free Design Act. Such an act could be submitted to state legislatures for adoption. Some work has already taken place on the development of a model act. Law students at Catholic University, under the auspices of the President's Committee on Employment of the Handicapped, made an original draft which was subsequently redrafted in 1976 by Alan Farber, a faculty member at Catholic University. The National Center on Law and the Handicapped, in South Bend, Indiana, is now developing Professor Farber's work further. Rather than duplicate the Center's work, only proposals for the content of a Uniform Barrier-Free Design Act will be made here in outline form. It is hoped that such proposals can be used by the Center in their project. The outline is divided into sections corresponding to possible sections of the Act, as proposed by the Catholic University team.

1. Purpose

   - To promote accessibility to and use of buildings and facilities by physically handicapped individuals through elimination of architectural barriers that make such access and use impossible or excessively inconvenient.

   - To create a Board for Barrier-Free Design with authority to: 1) develop and revise a Construction Code for Barrier-Free Design, 2) insure implementation of and compliance with the Code, and 3) periodically investigate the adequacy and impact of code requirements and compliance processes.

2. Definitions

   - Physically handicapped should be defined to include inability to walk, difficulty walking, sight and hearing impairments, difficulty reaching, difficulty manipulating hands, incoordination and low stamina.

   - Buildings and facilities should be defined to include buildings and all spaces within them, land developed for human use, walks and street crossings.

   - Architectural barriers should be defined to include all site features, built elements, space layout and clearances, materials, equipment and appliances that, by their presence, absence or design, deter access and free mobility or present unsafe conditions for people with disabilities.

3. Board for Barrier-Free Design

   - Number of members should be odd and not too large for efficient communication and action, most appointed by the Governor and some ex-officio members.

- A majority of members should be physically handicapped persons with a demonstrated understanding of barrier-free design.

- There should be at least two members from the construction industry.

- There should be at least two members who are registered architects.

- One member should be a building code official, preferrably from a state building code authority, if the state has one.

- At least one of the physically handicapped persons should also be over 65 years old.

- Ex-officio members should be from state departments of budget and finance, vocational rehabilitation, housing and community development, aging or state agencies responsible for design, construction and operation of state-owned or leased facilities.

- Terms should be staggered to provide continuity.

4. By-Laws

- The chairperson should be elected by Board.

- Board should meet on a regular basis, at least six times per year.

- A simple majority of members should be required for a quorum.

- Members should not be paid but should receive reimbursement for necessary expenses.

- The Board should be placed under an existing state agency that has responsibility for regulations governing the construction industry (e.g. State Building Code).

- The Board should have the authority to enter into contracts for professional and expert assistance.

- The Board should have the authority to employ an executive secretary and clerical staff.

- All review of exceptions and waivers by the Board must be made within 15 days of receipt of application.

- Codes and procedures developed by the Board must be given 30 days public review and all significant negative comments not addressed by revisions must be made public.

5. Duties

- Establish a Construction Code for Barrier-Free Design through adoption of ANSI A117.1 or development of similar specifications that reflect at least the same degree of accessibility to buildings and facilities.

- Periodically review and revise the Code to reflect technological advance, research evidence, the changing needs of handicapped persons and adverse effects of regulations on construction costs or feasibility.

- Promulgate, review and revise rules and regulations for administration of the Code through a State Building Code Authority, other state agency or local building codes.

- Develop a process for granting exemptions and waivers from the Code.

- Review and approve exceptions and waivers proposed by administrating agencies.

- Monitor the code review procedures of the administrating agencies.

- Hold hearings prior to development and revisions of the Barrier-Free Design Code, rules for its administration and the appropriateness of exceptions and waivers.

- Coordinate the Barrier-Free Design Code and its administration with other codes and regulations applying to building construction in the state.

- Receive, process and review complaints from any person alleging a violation of the Code or inordinant restriction in its application.

6. Powers

- Conduct research studies for purposes of development, review and revision of the Barrier-Free Design Code.

- Issue subpoenas, hold hearings and administer oaths in order to obtain information about the effectiveness of the code and its administration toward making buildings and facilities accessible and the impact upon construction cost and feasibility.

- Publish reports and recommend legislation.

- Review consideration of waivers on an appeal basis, if refused by code administration agencies.

- Issue cease and desist orders and penalties enforceable in court to enjoin administrating agencies from granting exceptions or waivers from the code that are not approved by the Board.

- Levee penalties for non-compliance with the Code.

- Grant exception and waivers to the Code for Barrier-Free Design, including modifications or alternates to the Code for application to existing buildings.

7. Penalties

   - Establish a system of penalties for use in enforcing the Code.

   - Fines shall not be less than $100 nor more than $1,000 for each days continued compliance.

   - Imprisonment shall not be for more than 30 days.

8. Other Provisions

   - Severability.

   - Repealer.

   - Effective date.

   - Appropriation.

Comparison to Farber's Version

The provisions in the outline differ from Farber's model in the following areas:

1. There are minor changes in the definitions.
2. The composition of the Board includes more representation from the construction industry and architectural profession to insure that their views are heard and a building code official who can be responsive to issues of regulatory process.
3. The composition of the Board does not allow an engineer instead of an architect since engineering brings little expertise of relevance to issues of barrier-free design.
4. The Board is specifically placed under an agency of government with responsibility for regulating the construction industry so that it is tied directly to the general regulatory process.
5. The Board is not given the duty of reviewing all building designs since that would create an additional expense and delay to an industry already plagued by regulations and review processes for building design already existant; it would also require an extensive staff for the Board.
6. Building regulatory agencies are given the task of reviewing designs but all exceptions and waivers must be reviewed and approved by the Board; the Board also has monitoring powers over the administering agencies.
7. The Board is required to submit its actions to public review to insure that it acts in a responsible way.
8. The Board is required to act on exceptions and waivers within a specified time period to avoid excessive time delays to construction projects.
9. Cost impact and feasibility are included as reasons to revise the Code for Barrier-Free Design to insure that the Code is not overly restrictive.

10. The Board is obliged to review complaints regarding restrictive Code provisions as well as lapses in accessibility.
11. The provision for display of the international symbol of accessibility is eliminated since that is included in the proposed revisions to ANSI A117.1 (1977).

Conclusion

While Farber's model includes the basis for achieving accessibility, it does not include important considerations that will insure the feasibility of a Code and Board for Barrier-Free Design. Any regulatory process that will make design review of buildings longer and create yet another regulatory function is bound to be opposed by the building industry and architects. Also, insufficient representation of these groups and lack of experience in building regulations on the part of Board members will lead to many poor decisions and much criticism. Third, codes and regulatory processes must be subject to public review to give them legitimacy. Finally, impacts that are overly restrictive must be given the same attention as gaps in accessibility to insure that the Code and Board are not viewed as political concessions to a special interest group. Since the process of achieving a barrier-free environment is highly political and dynamic, ignoring the considerations above could easily lead to a reaction by powerful industrial and professional interests. Their needs must be legitimately considered as important issues in the pursuit of barrier-free design. It is only through such a democratic process that accessibility will be viewed in a constructive way by those responsible for making it happen, rather than as another restrictive action by a burgeoning beauracracy.

APPENDIX

UNIFORM BARRIER FREE DESIGN ACT

(Proposed Official Draft)

The President's Committee on Employment of the Handicapped
Washington, D. C. 20210

INTRODUCTION

This act was originally drafted by two third-year law students at the Columbus School of Law, The Catholic University of America, Messrs. Robert J. Castagna and John D. Walters in January of 1975. Contributing to the discussion and formulation of the original draft were Mr. Richard Wheeler, a Georgetown University law student, Mr. Randy Swisher of the District of Columbia's Public Interest Research Group (DCPIRG), Mr. Edmond Leonard of the President's Committee on Employment of the Handicapped, and Professors Alan J. Farber and Raymond B. Marcin of the Columbus School of Law.

Following circulation of the original draft, Professor Farber agreed to redraft the act in an effort to improve its effectiveness. Many of the concepts of the original drafters have been retained. Suggestions advanced by the American Institute of Architects and the National Center for Law and the Handicapped have proved to be most useful.

My intent has been to create a strong act. Therefore, I have not compromised the force of the legislation by yielding to potential pressures that might be advanced by various interest groups. It is my hope that this legislation will promote discussion and action that will result in the handicapped being in a position to fully use and enjoy the resources about them.

The American National Standards Institute (ANSI) Standards have been adopted as a minimal device to secure uniformity. I trust that my discussion of some of the deficiencies in the Standards will serve to indicate why they have been designated as minimal standards. See, Farber, The Handicapped Plead for Entrance -- Will Anyone Answer?, 64 Ky. L.J. 99 (1976).

Alan J. Farber
Assistant Professor of Law
The Catholic University of America
Washington, D.C.

April, 1976

An act to promote accessibility to, and use of buildings and facilities by physically handicapped individuals through elimination of architectural barriers, enforced by a Board for Barrier Free Design, and to make uniform the law with reference thereto.

Be it enacted by the _____ of the State of _____, that this act may be cited as the "Uniform Barrier Free Design Act."

SECTION 1. DEFINITIONS. As used in this act:

(a) "Physically handicapped" means having a temporary or permanent impairment or condition which: causes a person to walk with difficulty or insecurity; affects the sight or hearing to the extent that a person is insecure or exposed to danger; or causes faulty coordination or reduces mobility, flexibility, coordination, or perceptiveness.

(b) "Buildings and facilities" means all buildings, facilities, appurtenant grounds and curbs at crosswalks and intersections, with the exception of one-and-two-family dwellings and undeveloped lands.

(c) "Architectural barriers" mean physical attributes of buildings and facilities which by their presence, absence, or design present unsafe conditions and/or deter access and free mobility for the physically handicapped in and around buildings and facilities.

SECTION 2. BOARD FOR BARRIER FREE DESIGN. There is hereby created the (state) Board for Barrier Free Design which shall consist of

the following eleven members: eight members appointed by the Governor on or before the effective date of this act, and three ex-officio members. At least six of these members shall be physically handicapped persons, who have demonstrated an understanding of, and a commitment to barrier free design, and at least one of whom the Governor shall appoint from the nominees of groups within the state which are fairly representative of the interests of the physically handicapped. The Governor also shall appoint one member from the nominees of groups within the state which are fairly representative of the interests of the construction industry, and one member who is a registered engineer or architect. Of the members first appointed, two shall serve for one year each; two for two years each; two for three years each; and two for four years each. Thereafter, the Governor shall appoint members for four year terms. A vacancy shall be filled in the same manner as the original appointment for the balance of the unexpired term.

The board shall have the following three ex-officio members or their designees: _____ (the state legislature shall insert these members: one each from the state departments of budget and finance, vocational rehabilitation, and engineering, or their equivalents).

SECTION 3. BY-LAWS. The Board shall meet as soon as practicable after appointment and elect one of its appointed members as chairperson who shall serve for a term of two years and until a successor is elected. The board shall meet not less than six times

annually, and at such other times as may be designated by the chairperson. Six members of the board shall constitute a quorum at all meetings. The members and the chairperson shall receive no compensation for their services, but shall be reimbursed for necessary expenses. Members of the board may be dismissed by the Governor for cause. The board shall be an agency of the State _____ (the state legislature shall insert the department or division under which the board shall operate).

SECTION 4. STAFF AND CONSULTANTS. The board may employ an executive secretary and clerical and secretarial assistants and may enter into contracts for professional and expert assistance to enable it to discharge its responsibilities and powers under this act.

SECTION 5. DUTIES. The board, in furthering the purpose of this act to ensure that buildings and facilities are accessible to, and functional for, the physically handicapped through the elimination of architectural barriers, shall:

(a) Establish, publish, and enforce a Code for Barrier Free Design which shall be at least as restrictive as the American National Standards Institute Specifications A 117.1-1961 (R1971), as modified, and which shall be regularly amended so as to reflect technological advances, research evidence, and the changing needs of handicapped persons.

(b) Promulgate such rules and regulations as may be necessary to enforce the provisions of this act, and the Code for Barrier Free Design.

(c) Hold public hearings prior to the promulgation of any

rules or regulations by the board in accordance with _____.
(insert the state's Administrative Procedure Act.)

SECTION 6. POWERS. The board shall:

(a) Conduct studies, hold hearings, administer oaths, issue subpoenas, publish reports, and recommend legislation to implement this act.

(b) Receive, process, and review complaints from any person alleging a violation of the Code according to the _____ (insert the state's Administrative Procedure Act).

(c) Issue cease-and-desist orders, enforceable in court according to the _____ (insert the state's Administrative Procedure Act), that enjoin an owner, an owner's agent, or a lessee-in-possession from further construction or use of buildings and facilities, until compliance with the Code for Barrier Free Design. Any person who violates any order of the court shall be fined, from the effective date of the order, not less than $100.00 nor more than $500.00 for each day's continued noncompliance. This fine shall be in addition to any other penalties imposed by the court.

(d) Grant exemptions that are annually renewable only if, on a clear and convincing showing, a compelling public interest outweighs the state's interest in removing architectural barriers. No exemptions may be granted in the case of buildings and facilities that are constructed, purchased, leased, or rented in whole or in part by the use of state funds or the funds of any political subdivision of the state, with the exception of histori-

cal buildings and monuments as these may be defined and determined in good faith by the board, or as recognized in the National Historical Register.

SECTION 7. OFFICIAL NONCOMPLIANCE. It shall be illegal and ultra vires for any state official who reviews building plans prior to their approval for construction or for any building inspector to knowingly and willingly approve the construction or opening of any building or facility which is not in compliance with the Code of Barrier Free Design, unless such building or facility had received a valid waiver from the Board for Barrier Free Design.

SECTION 8. PENALTY. Failure to comply with any provision of this act or any rule or regulation issued thereunder shall be punishable by a fine of not less than $100.00 nor more than $1,000.00, or by imprisonment for not more than thirty days, or both.

SECTION 9. INSIGNIA. The international symbol of access to the physically handicapped shall be permanently displayed at the entrance of buildings and facilities that are in compliance with the Code for Barrier Free Design. The international symbol of access is:

SECTION 10. CONSTRUCTION. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

SECTION 11. SEVERABILITY. If any provision of this act or the application of such provision to any person or circumstances is held invalid the remainder of this act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SECTION 12. REPEALER. The following acts and parts of acts are repealed: _____ (to be determined by the state legislature).

SECTION 13. EFFECTIVE DATE. This act shall take effect on _____ (state legislature shall insert either "upon approval by the Governor," or a specified date). All buildings and facilities, unless exempted in Section 1(b) or Section 5(d), whose construction, rehabilitation, or substantial remodeling begins at any time after _____ days following promugation of the Code for Barrier Free Design shall comply with that Code as amended. Five years after the promulgation of that Code or six years after the effective date of this act, whichever one occurs first, all existing buildings and facilities, except as exempted in Section 5(d), shall comply with the Code for Barrier Free Design.

SECTION 14. APPROPRIATION. The sum of _____ is appropriated to the Board for Barrier Free Design to effectuate the provisions of this act for the ensuing [year, biennium].